

Senate Bill No. 369

CHAPTER 12

An act to add Chapter 7 (commencing with Section 52075) to Part 5 of Division 31 of the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 11, 2002. Filed with
Secretary of State March 11, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 369, Dunn. Multifamily rental and affordable housing: financing.

Prior law, which was repealed on January 1, 2002, authorized any city or county to issue revenue bonds for the purpose of providing financing for multifamily rental housing, and capital improvements related to that housing.

This bill would reenact these provisions, as modified.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Chapter 7 (commencing with Section 52075) is added to Part 5 of Division 31 of the Health and Safety Code, to read:

CHAPTER 7. MULTIFAMILY RENTAL HOUSING

Article 1. Financing

52075. (a) Subject to the limitations of this chapter, any city or county may, in addition to any other power conferred by this part, issue revenue bonds as provided in Chapter 4 (commencing with Section 52030) for the purpose of financing the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing and for the provision of capital improvements in connection with and determined necessary to that multifamily rental housing.

(b) For this purpose, the term "home mortgage," as used in Chapter 4 (commencing with Section 52030), and as defined by Section 52013, shall be further defined to include construction loans and mortgage loans to housing sponsors to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental

housing and for the provision of capital improvements in connection with and determined necessary to the multifamily rental housing.

(c) To the extent possible, Chapter 4 (commencing with Section 52030) shall be construed in a manner that enables a city or county to comply with the purpose and requirements of this chapter.

52075.1. As used in this chapter “city or county” include any city and county.

52076. Subject to the limitations prescribed in this chapter, a city or county may make, or undertake commitments to make, construction loans and mortgage loans to housing sponsors to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing. For this purpose, the city or county shall enter into regulatory contracts and other agreements with housing sponsors receiving loans under this chapter to assure all requirements of this chapter are satisfied.

52077. Subject to the limitations prescribed in this chapter, a city or county may purchase, or undertake, directly or indirectly through lending institutions, commitments to purchase, construction loans and mortgage loans originated in accordance with a financing agreement with the city or county to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing and may make loans to lending institutions under terms and conditions which, in addition to other provisions determined by the city or county, shall require the lending institutions to use the net proceeds of the loans for the making, directly or indirectly, of construction loans or mortgage loans to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing.

52078. For the purposes of this chapter, a city or county shall have the power to issue its bonds to defray, in whole or in part, the costs of studies and surveys, insurance premiums, underwriting fees, legal, accounting, and marketing services incurred in connection with the issuance and sale of bonds, including bond and mortgage reserve accounts; trustee, custodian, and rating agency fees, and any other costs which are reasonably related to the foregoing.

52079. A city or county may, in conjunction with the financing of multifamily rental housing pursuant to this chapter, finance the acquisition, construction, rehabilitation, refinancing, or development of commercial property for lease, subject to all of the following conditions:

(a) No more than 10 percent of the proceeds of any revenue bonds issued pursuant to this chapter may be used to develop the commercial property for lease.



(b) The commercial property developed will be located on the same parcel or on a parcel adjacent to a multifamily rental housing development.

(c) As a condition of the financing, any lease payments collected in excess of payments necessary for debt service, operating expenses and any required reserves related to that property, shall be used to reduce rents on units reserved for occupancy by lower income households and very low income households in a multifamily rental housing development.

52080. (a) (1) A multifamily rental housing development financed, or for which financing has been extended or committed pursuant to this chapter from the proceeds of sale of each bond issue, shall at all times during the qualified project period meet the requirement of subparagraph (A) or (B), whichever is elected by the issuer at the time of issuance of the issue for each development:

(A) Twenty percent or more of the residential units in the development shall be occupied by individuals whose income is 50 percent or less of area median income.

(B) Forty percent or more of the residential units in the development shall be occupied by individuals whose income is 60 percent or less of area median income.

As used in this section, “qualified project period,” “income,” and “area median income” shall have the meanings specified in, and shall be determined in accordance with the provisions of, subsection (d) of Section 142 of the Internal Revenue Code of 1986, as amended, and United States Treasury regulations and rulings promulgated pursuant thereto.

With respect to a development for which the issuer has elected to meet the requirement of subparagraph (A), the rental payments paid by the occupants of the units meeting the requirement of subparagraph (A) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those occupants or on behalf of those units) shall not exceed 30 percent of 50 percent of area median income. With respect to a development for which the issuer has elected to meet the requirement of subparagraph (B), the rental payments paid by the occupants of the units meeting the requirement of subparagraph (B) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those occupants or on behalf of those units) shall not exceed 30 percent of 60 percent of area median income.

(2) The governing body shall ensure that the local agency issuing permits for the acquisition, construction, rehabilitation, refinancing, or development of the multifamily rental housing development shall



consider opportunities to contribute to the economic feasibility of the units and to the provision of units for very low income households through concessions and inducements including, but not limited to, the following:

- (A) Reductions in construction and design requirements.
 - (B) Reductions in setback and square footage requirements and the ratio of vehicular parking spaces that would otherwise be required.
 - (C) Granting density bonuses.
 - (D) Providing expedited processing of permits.
 - (E) Modifying zoning code requirements to allow mixed use zoning.
 - (F) Reducing or eliminating fees and charges for filing and processing applications, petitions, permits, planning services, water and sewer connections, and other fees and charges.
 - (G) Reducing or eliminating requirements relating to monetary exactions, dedications, reservations of land, or construction of public facilities.
 - (H) Other financial incentives or concessions for the multifamily rental housing development which result in identifiable cost reductions, as determined by the governing body. The governing body shall ensure that the local agency issuing permits for the development considers its responsibilities under this section and makes a good faith effort to enhance the feasibility of the project and to provide housing for lower income households and very low income households.
- (3) The governing body shall not permit a selection criteria to be applied to certificate holders under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) that is more burdensome than the criteria applied to all other prospective tenants.
- (4) It is the intent of the Legislature that the governing body finance projects that assist in meeting the urgent need for providing shelter for lower income households, very low income households, and persons and families of low or moderate income. To that end, the quality of materials and the amenities provided should not be excessive so as to hinder the prospect of achieving the stated goal.
- (5) It is the intent of the Legislature that the governing body finance projects that assist in meeting the urgent need for providing housing for families. To that end, developments with three- and four-bedroom units affordable to larger families shall have priority over competing developments.
- (b) As a condition of financing pursuant to this chapter, the housing sponsor shall enter into a regulatory agreement with the city or county providing that units reserved for occupancy by lower income households remain available on a priority basis for occupancy until the bonds are retired. As a condition of financing provided by bonds issued on or after



January 1, 1991, the housing sponsor shall enter into a regulatory agreement with the city or county providing that units reserved for occupancy by lower income households remain available on a priority basis for occupancy for the qualified project period. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the city or county as grantee.

(c) The governing body shall ensure that units occupied by lower income households are of comparable quality and offer a range of sizes and number of bedrooms comparable to the units that are available to other tenants.

(d) (1) The city or county shall give priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees or other local fees for multifamily rental developments which incorporate innovative and energy-efficient techniques that reduce development or operating costs and that have the lowest feasible per unit cost, as determined by the city or county, based on efficiency of design or the elimination of improvements that are not required by applicable building standards.

(2) The city or county shall give equal priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees or other local fees on multifamily rental housing developments that do any of the following:

(A) Utilize federal housing or development assistance.

(B) Utilize redevelopment funds or other local financial assistance, including, but not limited to, contributions of land.

(C) Are sponsored by a nonprofit housing organization.

(D) Provide a significant number of housing units, as determined by the city or county, as part of a coordinated jobs and housing plan adopted by the city or county.

(E) Exceeds the ratios specified in subparagraph (A) or (B) of paragraph (1) of subdivision (a) or restricts the occupancy for these units for the longest period beyond the required minimum number of years.

(e) (1) New and existing rental housing developments may be syndicated after prior written approval of the governing body. The governing body shall grant that approval only after the city or county determines that the terms and conditions of the syndication comply with this section.



(2) The terms and conditions of the syndication shall not reduce or limit any of the requirements of this chapter or regulations adopted or documents executed pursuant to this chapter. No requirements of the city or county shall be subordinated to the syndication agreement. A syndication shall not result in the provision of fewer assisted units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

(f) At the option of the city or county, the amendments to this subdivision made by Chapter 907 of the Statutes of 1983 may be made applicable to any multifamily rental housing development financed by the issuance, on or after September 3, 1982, of bonds authorized by this chapter.

(g) Following the expiration or termination of the qualified project period, except in the event of foreclosure and redemption of the bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required to be reserved for occupancy pursuant to subdivision (a) and financed with proceeds of bonds issued on or after January 1, 1991, shall remain available to any eligible household occupying a reserved unit at the date of expiration or termination, at a rent not greater than the amount set forth by subdivision (a), until the earliest of any of the following occur:

(1) The household's income exceeds 140 percent of the maximum eligible income specified in subdivision (a).

(2) The household voluntarily moves or is evicted for "good cause." "Good cause" for the purposes of this section, means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the development, or the purposes or special programs of the development.

(3) Thirty years after the date of the commencement of the qualified project period.

(4) The sponsor pays the relocation assistance and benefits to tenants as provided in subdivision (b) of Section 7264 of the Government Code.

(h) During the three years prior to expiration of the qualified project period, the sponsor shall continue to make available to eligible households reserved units that have been vacated to the same extent that nonreserved units are made available to noneligible households.

(i) This section shall not be construed to require a city or county to monitor the sponsor's compliance with the provisions of subdivision (g).

(j) The requirements of subdivisions (g) to (i), inclusive, shall be contained in a regulatory agreement required pursuant to subdivision (b).



(k) Notwithstanding Section 1461 of the Civil Code, the provisions of this section shall run with the land and may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by an owner's failure to comply with this section.

52080.5. (a) (1) When refunding revenue bonds for multifamily housing which were previously issued pursuant to Section 52080, the city, county, or city and county shall ensure that rental units required, by this chapter or by applicable federal law at the time the original bonds were issued, to be reserved for occupancy for low- and very low income households shall remain occupied by, or made available to, those persons at least until the later of the following:

(A) The date originally so required.

(B) As long as any bonds remain outstanding with respect to the development.

(2) For bonds previously issued to finance a development where all of the units, other than management units, are, at the time of the refunding, subsidized by a housing assistance payments contract for new construction and substantial rehabilitation pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), subparagraph (B) of paragraph (1) shall refer to a period of time until the termination of the contract.

(b) The city, county, or city and county may determine that the period set forth in paragraph (1) of subdivision (a) shall not apply to the refunding of previously issued revenue bonds for which there is a mandatory redemption or acceleration as a result of default under the terms of the existing loan agreement or other security documents.

52081. For purposes of this article, "housing sponsor" means a person as defined in Section 52016.

52085. The primary purpose of this chapter is to meet the multifamily rental housing needs of persons and families of low or moderate income. The exercise of the powers granted by this division shall be in all respects for the benefit of the people of this state and for their health and welfare. Therefore, any bonds issued by a city, county, or city and county pursuant to this chapter, their transfer, and the income therefrom shall at all times be free from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance and gift taxes.

52086. Two or more cities in the same county, or a county and one or more cities within the county, or two or more counties, may enter into an agreement to join or cooperate with one another in the exercise jointly, or otherwise, of any or all of their powers for the purpose of financing multifamily rental housing development pursuant to this chapter.



52087. The same notice requirements specified in Section 65863.10 of the Government Code shall apply to multifamily rental housing that receives financial assistance pursuant to this chapter.

Article 2. State Assistance

52090. This article constitutes an alternative method for cities and counties to issue bonds for making construction loans and mortgage loans for multifamily rental housing developments pursuant to the provisions of this chapter.

52090.5. The agency and any city or county may enter into an agreement which provides that the agency may sell bonds authorized pursuant to Chapter 4 (commencing with Section 52030) for the city or county and operate a program with the proceeds of the sale for the purpose of providing funds for construction loans and mortgage loans for multifamily rental housing developments within the city or county and for the provision of capital improvements in connection with and determined necessary to the multifamily rental housing.

52091. Any agreement made pursuant to Section 52090.5 shall contain all of the following provisions:

(a) Limitations on the maximum amount of bonds to be issued by a city or county.

(b) A requirement that all bonds and any prospectus in connection with the bonds contain a legend condition to the following effect: “Neither the faith and credit of the State of California or the agency nor the taxing power of the state is pledged to the payment of principal or interest on this bond.”

(c) A requirement that the agency approve the bond counsel selected by the city or county.

(d) The designation of criteria for multifamily rental housing developments eligible for financing; the number of units which shall be available for occupancy by persons of low income, which shall not be less than 20 percent of the total units; the amount to be allocated to a bond reserve fund; and, any other matters which the agency finds necessary or desirable.

(e) That the agency shall make construction loans and mortgage loans for multifamily rental housing developed within the city or county.

(f) That the agency shall supervise all construction and management of multifamily rental housing developments financed pursuant to this chapter on behalf of the city or county, and with the same powers and duties under this chapter, to ensure that all requirements of this part are met.



52091.5. Bonds issued pursuant to this article shall not be deemed bonds of the agency for the purposes of any limitations contained in Section 51350.

52092. The agency shall adopt uniform regulations for administration of local programs under this article. Local programs conducted by the agency under this article shall be administered in a manner consistent with this chapter.

Article 3. Miscellaneous

52095. Whenever a complaint is received concerning a violation of the restrictions imposed pursuant to Section 52080, the city or county shall investigate promptly and make a report to the complaining party on whether the violation existed and whether it persists, and if it persists, what action the city or county will take to remedy the violation. When the city or county determines that a violation exists, whether determined upon an investigation of a complaint or on its own motion, the city or county shall take all appropriate action, including necessary legal action, to promptly eliminate the violation.

Notwithstanding any provision of this section, any person aggrieved by a violation may seek a judicial remedy without regard to whether a complaint has been made to the city or county or whether the city or county is then taking any action to remedy the violation.

Article 4. Application to Chartered Cities

52097. Except as otherwise provided in this article, this chapter shall not be construed to limit or otherwise restrict the authority of chartered cities to issue bonds for the purpose of financing the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing or for the provision of capital improvements in connection with and determined necessary to that multifamily rental housing. For purposes of this article, certificates of participation in any form of obligation of a city, county, or city and county shall be considered to be bonds.

52097.1. The maximum aggregate amount of bonds that may be issued pursuant to this chapter, charter provision, or ordinance for the purposes specified in Section 52097 shall not exceed two billion two hundred fifty million dollars (\$2,250,000,000) in any calendar year.

52097.5. (a) Multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this chapter from the proceeds of sale of each bond issue shall at all times during the qualified project period meet the requirement of paragraph (1)



or (2), whichever is elected by the issuer at the time of issuance of the issue for each development:

(1) Twenty percent or more of the residential units in the development shall be occupied by individuals whose income is 50 percent or less of area median income.

(2) Forty percent or more of the residential units in the development shall be occupied by individuals whose income is 60 percent or less of area median income.

As used in this subdivision, “qualified project period,” “income,” and “area median income” shall have the meanings specified in, and shall be determined in accordance with the provisions of, subsection (d) of Section 142 of the Internal Revenue Code of 1986, as amended, and United States Treasury regulations and rulings promulgated pursuant thereto.

(b) With respect to a development for which the issuer has elected to meet the requirement of paragraph (1) of subdivision (a), the rental payments paid by the occupants of the units meeting the requirement of paragraph (1) of subdivision (a) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those occupants or on behalf of those units) shall not exceed 30 percent of 50 percent of area median income.

(c) With respect to a development for which the issuer has elected to meet the requirement of paragraph (2) of subdivision (a), the rental payments paid by the occupants of the units meeting the requirement of paragraph (2) of subdivision (a) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those occupants or on behalf of those units) shall not exceed 30 percent of 60 percent of area median income.

52098. Each city, county, and city and county that has issued bonds pursuant to this chapter or a charter provision or ordinance for the purposes specified in Section 52097 shall file a report annually, on or before March 1, with the Governor, the Legislature, and the department, which report shall include all of the following information:

(a) The total amount of bonds issued by the city, county, or city and county pursuant to this chapter or another authority.

(b) The total number of units in multifamily rental housing developments financed pursuant to this chapter or another authority.

(c) The total number of units in multifamily rental housing developments reserved for occupancy on a priority basis for lower income households.

(d) The total number of units, if any, in a multifamily rental housing development reserved for occupancy on a priority basis for very low income households.



SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

A number of affordable multifamily housing developments that are currently being processed would be adversely affected by the failure of the Legislature to reinstate the Multifamily Housing Program.

